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SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

21st CENTURY FINANCIAL
SERVICES, LLC,

Plaintiff,

vs.

MANCHESTER FINANCIAL BANK,

Defendant.

CASE NO. 14mc0500

**ORDER GRANTING MOTION
FOR ORDER COMMANDING
APPEARANCE FOR
EXAMINATION OF RICHARD
GIBBONS, PERSON MOST
KNOWLEDGEABLE OF
MANCHESTER FINANCIAL
GROUP, L.P.**

On October 30, 2014, Judgment Creditor 21st Century Financial Services, LLC, moved for an order commanding the appearance for examination of Richard V. Gibbons, person most knowledgeable of third-party Manchester Financial Group, L.P. [Doc. 20] Judgment Debtor Manchester Financial Bank requested an opportunity to respond and filed its Opposition on November 14, 2014. [Doc. 22] Before the Court are Judgment Creditor's Motion [Doc. 20], Judgment Debtor's Opposition [Doc. 22], Judgment Creditor's Reply [Doc. 24], and Judgment Debtor's Sur-Reply. [Doc. 26] After carefully reviewing the parties' extensive briefing, the exhibits, and the applicable law, for the reasons discussed below, this Court GRANTS Judgment Creditor's Motion.

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I. STATEMENT OF FACTS

The following factual background is derived largely from the opinion of the United States Court of Appeals for the Fifth Circuit, which affirmed the arbitration tribunal award of approximately \$532,000 entered in favor of Judgment Creditor and against Judgment Debtor on February 2, 2010. *21st Century Fin. Servs., L.L.C., v. Manchester Fin. Bank*, 747 F.3d 331 (5th Cir. 2014). The Fifth Circuit's opinion is filed in this case as Docket Number 24-4.

In 2008, a group of bank organizers – including, among others, Frederick Mandelbaum and Richard Gibbons – sought to charter a bank to be called Manchester Financial Bank, N.A. (hereinafter “Manchester Bank”). [Doc. 24-4, p. 3] In February 2008, Manchester Bank entered into an “Agreement for Computer Processing Services” with 21st Century. *Id.* The Agreement identified Frederick Mandelbaum as Manchester Bank's CEO, included an arbitration provision, and provided the bank's address as 7825 Fay Street, Suite 100, La Jolla, CA 92037. *Id.*

In connection with the Agreement, Manchester Financial Group, L.P. (“MFG”) issued two checks to pay deposits to 21st Century for services to be provided to Manchester Bank. [Doc. 24-4, p. 3] However, on October 3, 2008, Frederick Mandelbaum emailed 21st Century that the bank's principal investor had “decided not to move forward based on the current economic turmoil.” *Id.* In response, on a date not specified in the Fifth Circuit's written opinion, the president of 21st Century forwarded Mr. Mandelbaum two invoices for amounts due under the Agreement. Mr. Mandelbaum emailed 21st Century's president back, agreeing to pay one invoice but disputing liability on the second. *Id.*

The parties did not resolve the amount due under the Agreement. [Doc. 24-4, p. 4] Michael Levinson, attorney with the San Diego office of the Cooley Law Firm, copying bank organizer Richard Gibbons, contended in a letter on an unknown date that neither MFG nor Manchester Bank was liable for the disputed amounts. *Id.* In August and September 2009, 21st Century demanded arbitration. *Id.* The arbitration

1 was held in Austin, Texas, on January 13, 2010. *Id.* p. 5. While Manchester Bank did
2 not appear, 21st Century provided evidence in support of its claim. *Id.* On February 2,
3 2010, the arbitration tribunal issued an award in favor of 21st Century for \$477,070.29
4 in damages, \$44,274.00 in legal fees, \$10,760.00 in arbitration costs, and any post-
5 judgment interest. *Id.* at 6.

6 21st Century thereafter sued in Texas state court under the Federal Arbitration
7 Act to confirm the award, and Manchester Bank removed the matter to federal court.
8 [Doc. 24-4, p. 6] Manchester Bank argued before the U.S. District Court for the
9 Western District of Texas that 21st Century had failed to comply with the notice
10 provision in the Agreement and had not attempted to negotiate in good faith with senior
11 management prior to invoking arbitration as the Agreement required. *Id.* After a bench
12 trial on an agreed record and stipulated facts, the District Court granted 21st Century's
13 motion to confirm the award and rejected the bank's two theories opposing
14 confirmation. *Id.* at 6. The Fifth Circuit affirmed on appeal on March 31, 2014. *See*
15 *id.* at 13.

16 Judgment Creditor filed the judgment of the U.S. District Court for the Western
17 District of Texas in this Court on April 25, 2014. [Doc. 24-10] On July 11, 2014, this
18 Court granted Judgment Creditor's Motion for an order compelling Frederick
19 Mandalbaum, CEO of Judgment Debtor Manchester Bank, to appear for an
20 examination. [Doc. 3] The examination of Mr. Mandalbaum was vacated and
21 rescheduled several times upon request of the parties, and finally went forward on
22 September 24, 2014. *See* [Doc. 18].

23 Judgment Creditor's Motion followed on October 30, 2014, seeking an order to
24 compel MFG to appear for examination through its person most knowledgeable,
25 Richard Gibbons. [Doc. 20] Judgment Creditor states that the third-party examination
26 is appropriate because MFG "has been inextricably linked to the Judgment Debtor's
27 business affairs and finances from the inception of Judgment Debtor's existence" and
28 possesses "information and documents regarding Judgment Debtor's finances and

business affairs” that are not otherwise available. [Doc. 24, p. 6, 8] Judgment Debtor opposes the examination of MFG, arguing that Judgment Creditor’s Motion is both procedurally defective and seeks relief that is not authorized by law. Judgment Debtor further contends that Judgment Creditor seeks to use the third-party examination procedure to improperly re-examine Judgment Debtor through a new representative simply because it is unhappy with the testimony provided by Mr. Mandelbaum. [Doc. 26, p. 9]

II. DISCUSSION

A. Applicable Law

Rule 69 of the Federal Rules of Civil Procedure authorizes federal courts to enforce a money judgment by writ of execution or other means in accordance with the procedures set in place by state law. FED. R. CIV. P. 69(a)(1). Accordingly, in ruling on Judgment Creditor’s Motion, this Court must follow California’s statutory provisions for the enforcement of judgments, known collectively as the Enforcement of Judgments Law (“EJL”) and set forth in California Code of Civil Procedure §§ 680.010 through 724.260.¹ Neither party disputes that California judgment debtor law is applicable here.

Judgment debtor proceedings under California law “permit the judgment creditor to examine the judgment debtor, or third persons who have property of or are indebted to the judgment debtor, in order to discovery property and apply it toward the satisfaction of the money judgment.” *Imperial Bank v. Pim Elec., Inc.*, 39 Cal. Rptr.2d 432, 437 (Cal. Ct. App. 1995). Debtor examinations are intended “to allow the judgment creditor a wide scope of inquiry concerning property and business affairs of the judgment debtor,” *Hooser v. Superior Court*, 101 Cal. Rptr. 2d 341, 345 (Cal. Ct. App. 2000), and “to leave no stone unturned in the search for assets which might be

¹All future statutory citations will be to the California Code of Civil Procedure (West 2014), unless otherwise noted.

1 used to satisfy the judgment.” *Troy v. Superior Court*, 231 Cal. Rptr. 108, 112 (Cal.
2 Ct. App. 1986).²

3 **B. The Examination of MFG is Appropriate and In the Interests of Justice and**
4 **Fundamental Fairness**

5 Under the unique facts and circumstances of this case, this Court finds that the
6 principles of fundamental fairness weigh in favor of allowing Judgment Creditor to
7 examine MFG to obtain information about property and assets of the Judgment Debtor.
8 This Court so finds for two distinct reasons. First, the record is clear that MFG was
9 intimately involved at all stages of the operations of the Judgment Debtor, including
10 its creation and dissolution. For example, MFG supplied the first two deposit checks
11 to Judgment Creditor under the Agreement between Judgment Creditor and Judgment
12 Debtor [Doc. 24-4, p. 3], signed the lease on the office space listed as Judgment
13 Debtor’s address [Doc. 24-11, p. 3; Doc. 24-4, p. 3], entered into a contract for
14 consulting services rendered to Judgment Debtor by its CEO [Doc. 24-12, pp. 6-7], and
15 paid vendors retained to provide services for Judgment Debtor such as telephones and
16 watering the flowers. [Doc. 24-12, pp. 3-4] Second, the testimony of Judgment
17 Debtor’s CEO indicates that MFG may possess documents pertaining to Judgment
18 Debtor that are not otherwise available to Judgment Creditor – for example, the lease
19 for the office space in La Jolla, *id.* at 2-3, the contracts and invoices from the
20 aforementioned vendors, *id.*, and Mr. Mandelbaum’s own contract for his consulting
21 services to the Bank, *id.* at 6-7.

22 Were Judgment Creditor seeking to compel the examination of a completely
23 unrelated third party, this Court might be more receptive to that party’s objections.
24 However, given the broad scope of judgment debtor examinations generally under
25 California law and the close nexus between MFG and Judgment Debtor, this Court

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27 ² Judgment Debtor argues that these principles of broad inquiry only apply to
28 examinations of judgment debtors, and not to examinations of third parties. *See* [Doc.
26, p. 5 n.4] However, Judgment Debtor cites no authority that persuades this Court
that the broad scope of proceedings outlined in *Imperial Bank*, *Hooser* and *Troy* should
not apply equally to all procedures under the EIL.

1 finds that it is appropriate to grant Judgment Creditor an opportunity to examine MFG
2 to determine whether MFG has information that would aid in the enforcement of the
3 judgment.

4 **C. The Examination of MFG Is Authorized Under California Law**

5 After carefully considering the legal arguments raised by the parties, this Court
6 finds that the third-party examination of MFG is authorized under § 708.130 and § 187.

7 ***1. California Code of Civil Procedure § 708.130***

8 Section 708.130(a) states: “Witnesses may be required to appear and testify
9 before the court or referee in an examination proceeding under this article in the same
10 manner as upon the trial of an issue.” CAL. CIV. PROC. CODE § 708.130(a) (West
11 2014). A plain language reading of this provision indicates to this Court that any
12 witness with relevant information may be compelled to submit to an examination in
13 connection with a judgment enforcement, so long as that witness could be called upon
14 to testify as a witness in a trial on the issue. This Court’s reading of the statute is
15 shared by an authoritative California practice guide, which states:

16 **Examining other persons with information:** In addition, it appears that
17 any person with knowledge leading to enforcement of the judgment (e.g.
18 debtor’s bookkeeper, accountant or nondebtor spouse) can be subpoenaed
19 to testify before the court or a referee in an examination proceeding in the
same manner as a trial witness. [See CCP §§ 708.130, 708.140].

20 THE HON. ALAN M. AHART, CAL. PRACTICE GUIDE: ENFORCING JUDGMENTS & DEBTS,
21 Ch. 6G-1 § 6:1280 (The Rutter Group ed., 2014).

22 Judgment Debtor advances a much narrower interpretation of § 708.130.
23 Specifically, Judgment Debtor points to the preceding section of the EJP, § 708.120,
24 which authorizes a court to order a third-party examination when it is proven that (1)
25 the third party has possession or control of the judgment debtor’s property, or (2) the
26 third party is indebted to the judgment debtor in an amount exceeding \$250. CAL. CIV.
27 PROC. CODE § 708.120(a) (West 2014). Judgment Debtor argues that third party
28 examinations are *only* allowed when the requirements of § 708.120(a) are satisfied, and

1 that any broader reading of § 708.130 would render § 708.120 superfluous.³ [Doc. 26,
2 p. 5]

3 This Court has carefully considered Judgment Debtor's arguments, but can find
4 no California case law that directly supports Judgment Debtor's position. The case
5 heavily relied upon by Judgment Debtor, *Fox Johns*, is inapposite because it concerned
6 an examination that was obtained under § 708.120. *See Fox Johns Lazar Perkin &*
7 *Wexler, APC, v. Superior Court*, 162 Cal. Rptr. 3d 571, 577 (Cal. Ct. App. 2013)
8 ("Brewer obtained an order per § 708.120 setting an examination of Wexler"). There
9 is no clear indication from the *Fox Johns* opinion that the respondent moved for the
10 third-party examination to be conducted exclusively under § 708.130 rather than
11 § 708.120, as Judgment Creditor has done here.⁴ *Fox Johns* is primarily a case about
12 the scope of permissible questions in an examination conducted pursuant to § 708.120,
13 and chiefly holds that § 708.120 does not allow for expansive examination and is not
14 the proper mechanism to discover the identity of a law firm's clients, review a law
15 firm's billings to other clients or obtain information about entities that may be a
16 judgment debtor's alter ego. *Id.* at 579. This Court is not persuaded to adopt a broader
17 reading of *Fox Johns* at this time, absent a clearer statement from the California courts
18 or legislature, that § 708.120 is the *only* statute that authorizes third-party witness
19 examinations under the EJL.

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22 ³ Judgment Creditor concedes that it cannot seek to compel the examination of
23 MFG under § 708.120; Judgment Creditor has not alleged that MFG owes Judgment
24 Debtor any property or money. [Doc. 24, p. 8]

25 ⁴ The Court acknowledges that *Fox Johns* contains language suggesting that the
26 Respondent rooted some or all of its arguments *on appeal* in § 708.130 rather
27 than § 708.120. *See* 162 Cal. Rptr. at 577-78 ("Brewer [] fails to explain why
28 § 708.130 relates to issues here before us," and "Brewer does not cite to, discuss, or
otherwise mention [§ 708.120] in its respondent's brief.") However, the *Fox Johns*
opinion is clear that in the first instance, the Respondent obtained its third-party
examination order from the trial court under § 708.120. *Id.* This distinguishes *Fox*
Johns from the instant case and underscores this Court's conclusion that *Fox Johns* is
primarily an opinion that defines the scope of § 708.120, not § 708.130.

1 **2. California Code of Civil Procedure § 187**

2 This Court not need determine as a matter of law that § 708.130 specifically
 3 authorizes expansive third-party witness examinations, and declines to do so here. As
 4 an alternative, § 187 of the California Code of Civil Procedure is a catch-all provision
 5 that gives a court “all the means necessary to carry [its jurisdiction] into effect.” CAL.
 6 CIV. PROC. CODE § 187 (West 2014). Specifically, “if the course of proceeding be not
 7 specifically pointed out by this Code or the statute, any suitable process or mode of
 8 proceeding may be adopted which may appear most conformable to the spirit of this
 9 Code.” *Id.* This provision has been invoked by both state and federal courts to
 10 effectuate judgment enforcements through procedures not specifically authorized under
 11 the EJJ. *See NEC Electronics Inc. v. Hurt*, 256 Cal. Rptr. 441, 444 (Cal. Ct. App.
 12 1989) (invoking § 187 to amend a judgment to add additional judgment debtors, even
 13 when that procedure was not specifically authorized by the EJJ); *Bank of Montreal v.*
 14 *SK Foods, LLC*, 476 B.R. 588, 597 (N.D. Cal. 2012) (citing *NEC Electronics* and
 15 § 187 for the authority to amend a judgment to add judgment debtors). As the
 16 California Court of Appeal in *NEC Electronics* explained, “§ 187 of the Code of Civil
 17 Procedure grants to every court the power to use all means to carry its jurisdiction into
 18 effect, even if those means are not set out in the code.” 256 Cal. Rptr. at 444.

19 Accordingly, to the extent it remains unclear whether the third-party examination
 20 of MFG is authorized under the specific provisions of the EJJ, this Court exercises its
 21 discretion under § 187 to order the same.

22 **C. Judgment Creditor’s Motion is Not Procedurally Barred**

23 As a final matter, the Court is unpersuaded by Judgment Debtor’s arguments that
 24 procedural defects render Judgment Creditor’s Motion fatally flawed. Judgment
 25 Creditor’s Motion appears to have been filed in accordance with the informal
 26 procedures put in place in this District for noticing and filing motions for examinations
 27 in judgment enforcement cases, and thus does not violate this Court’s Local or
 28 Chambers Rules. *See* [Doc. 24, pp. 1-2] Additionally, since the Texas judgment has

1 been registered and filed in this District, the statutory requirements of § 708.160(d) do
2 not apply. *See* 28 U.S.C. § 1963; *Peterson v. Islamic Republic of Iran*, 627 F.3d 1117,
3 1123 (9th Cir. 2010) (“When a final judgment from one district court is registered with
4 another district court pursuant to 1963, the registered judgment must be treated like any
5 other judgment entered by the registering court.”). Judgment Debtor cites a single,
6 unreported opinion from the U.S. District Court for the Eastern District of California
7 to support its position that Judgment Creditor must comply with the regulations
8 of § 708.160(d) even though the Texas judgment has been registered and filed in this
9 District. [Doc. 26, p. 3] (citing *Gordon v. Vitalis Partners, LLC*, No. 2:10-mc-0070
10 WBS KNJ, 2012 WL 161033, at *2 (E.D. Cal. Jan. 18, 2012)). However, this Court
11 is not convinced by Judgment Debtor’s claim, as the *Gordon* opinion does not address
12 the specific arguments advanced by Judgment Creditor under 28 U.S.C. § 1963 and
13 *Peterson*, which this Court finds persuasive. A decision from another District does not
14 bind this Court. *See Hart v. Massanari*, 266 F.3d 1155, 1174 (9th Cir. 2001).

15 This Court finds that Judgment Creditor’s Motion is not procedurally flawed, but
16 even if it were, this Court would exercise its discretion under § 187 and this District’s
17 Local Rule 1.1(d) to accept the Motion despite its deficiencies, in the interests of
18 justice. *See* CAL. CIV. PROC. CODE § 187(a) (West 2014); CivLR 1.1(d).

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